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OCTOBER TERM, 1902.

KAORU YAMATAYA, APPELLANT,
v.
THOMAS M. FISHER, IMMIGRANT AND CHINESE INSPECTOR. } No. 171.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.

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The appellant in this case, in the petition to the district court on her behalf for habeas corpus, declared that she is not a pauper, and is not likely to become a public charge, being the ground upon which the United States ordered her to be deported. There were the usual assertions that she had not come to the United States in violation of law, and was lawfully within the United States and entitled to remain (Rec., p. 1). The return to the writ (p. 3) alleges due investigation by the immigration inspector, and, by the statement that the girl clandestinely and unlawfully entered the United States, that she was a pauper

and likely to become a public charge within a year, certainly denied allegations of the appellant's petition for habeas corpus, although counsel's brief undertakes to say that none of her allegations was denied, and that the truth of the affirmative matter that she alleged appears uncontradicted and admitted. This is obviously not the fact.

The inspector's return further states his decision, in pursuance of the facts elicited by his investigation, that the appellant had no right to be within the United States and was a proper person for deportation; whereupon the Secretary of the Treasury, being satisfied from the proof submitted that the appellant was an alien immigrant who entered this country from Japan contrary to the act of Congress of March 3, 1891, duly issued his warrant of deportation.

The traverse of the return says the investigation was pretended; that advantage was taken of the petitioner's ignorance and lack of friendly assistance and counsel; that the evidence obtained by the inspector is garbled, misleading, and untrue, based upon answers to questions which were erroneous because the questions were not understood; and, in short, suggests that the inspector dealt with the girl unfairly and arbitrarily. The traverse repeated the denial that the girl was a pauper, and asserted that ample support and maintenance would be provided for her. The traverse contains the further allegation that it was understood by the girl and her uncle, the petitioner in her behalf, that the inspector intended to hold the girl as a witness in a

criminal charge which was pending against the uncle, and that, being ignorant that any decision had been made or proceedings taken regarding deportation, for this reason the appeal provided by law had not been taken from the inspector's decision.

This is the case; and if such roving, experimental, and general allegations are to be heard to impeach the conclusive authority and proceedings of immigrant inspectors and the finality of the action of the Secretary of the Treasury, there is little meaning in laws which commit all such questions to the investigation and decision of these officers, and presume necessarily that the entire proceedings are honestly and fairly conducted.

The petitioner moved to quash the return, which the court below denied. The inspector then demurred to the traverse as an insufficient answer to his return, upon which the court sustained the demurrer, and then an appeal to this court was allowed with an admission to bail and a stay of execution of the warrant of deportation.

ARGUMENT.

I.

The law provides (act of March 3, 1891, 26 Stat., 1084) that in accordance with previous laws regulating immigration other than Chinese, all paupers or persons likely to become a public charge shall be excluded from the United States (sec. 1); that upon the arrival of alien immigrants by water the duty of report by

the master and agents of the vessel and of inspection by the immigration officers shall arise:

> The inspection officers and their assistants shall have power to administer oaths and to take and consider testimony touching the right of any such aliens to enter the United States, all of which shall be entered of record. * * * All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the Superintendent of Immigration, whose action shall be subject to review by the Secretary of the Treasury.

The representatives of the vessel must adopt due precautions to prevent unauthorized landing, and are punishable if they knowingly or negligently permit it (sec. 8); all aliens *who may unlawfully come* into the United States are to be sent back on the vessel by which they arrive, *if practicable* (sec. 10); any alien who comes into the United States in violation of law may be returned at any time within a year; even an alien duly admitted, who, in fact, becomes a public charge within a year from causes existing prior to arrival, is deemed to have come in violation of law, and shall be returned (sec. 11).

The investigation by the inspector in this case was undertaken four days after the girl's unauthorized landing, and the warrant of deportation was issued within ten days later. The girl came into the United States in violation of law if she was a pauper or likely to become a public charge; and so the in-

spector found her to be under his investigation and power of decision.

One of the "existing acts regulating immigration" referred to in section 1 of the act of 1891 is contained in the deficiency bill approved October 19, 1888 (25 Stat., 565). This amended the alien contract-labor law of 1887, and is an aid in the construction of the act of 1891. It authorized "the Secretary of the Treasury, in case that he shall be satisfied that an immigrant has been allowed to land contrary to the prohibition of that law [the said act of 1887], to cause such immigrant, within the period of one year after landing or entry, to be taken into custody and returned to the country from whence he came." * * *

The sundry civil act of August 18, 1894 (28 Stat., 390), contained the following provision, which has often been before the court:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

The regulations applicable (Immigration Laws and Regulations, edition of 1900) prescribe that (Art. VI) an alien refused permission to land, or pending appeal, may confer with friends or counsel in such manner as the Commissioner of Immigration or inspector (Art. III) may deem proper. Article VII allows an appeal

to the Treasury Department if an immigrant claims to be aggrieved by the decision of the inspection officer.

It is a fair presumption that this girl conferred with friends; presumably she was with them before and during the days when the inspector was investigating her case. The traverse to the return clearly implies as much in the statements regarding the arrangements of her parents and relatives for her support and education in this country. The petitioner for the writ is her uncle, and claims her care and custody on that ground. When she was taken into custody by the inspector, she was delivered to one of the charitable institutions which exist to care for such foreign girls and help them, often against sinister interests of relatives, so-called friends, or masters.

The brief on the other side, in enlarging upon the "pretended" investigation and the alleged deception practiced, shows that attorneys had been employed in the girl's interest, because it is claimed that they were deceived as to the inspector's intention. (App. brief, p. 17.) If it is reasonable to suppose that they were deceived, or that the inspector intended to deceive them, this would simply show that they were indifferent or incapable attorneys. It was clearly their business to have taken the appeal provided by law.

The assumption invariably is in such cases that the petitioner tells the truth and the Government officer always perverts and distorts it to serve his own evil and crafty ends. But the court below, fully apprised of all the facts and surrounding circumstances, evidently thinks otherwise.

In any event it will not do to say that the girl and the petitioner were ignorant of the right of appeal. The man must be held to knowledge of and compliance with the law on behalf of the girl for whom he appeared. As shown by the above references he had evidently employed counsel. If such petitioners are not held to the fundamental responsibilities, such allegations would be made in every case, and the force of the law would be minimized and its scheme nullified.

It is to be remembered that the general theory of *habeas corpus* submits a naked question of law upon admitted facts. Necessarily, when the instance court takes such action as in this case, the meaning is that the official obedience to the law and orderly process sufficiently appear; that the action was thus with warrant of law, leaving the mere naked question of constitutionality; and therefore that the counter allegations or matters of confession and avoidance have been regarded by the instance court as untrue, or not sufficiently appearing, or immaterial.

The principle affecting this subject in reference to Chinese exclusion cases as well as under the general immigration laws is the same.

II.

The appellant argues that the act of 1891 applies only to landing; that after arrival here, through whatever evasion of inspection, the Government has no remedy. This species of argument has already been heard here in Chinese cases, and has not been approved.

The very terms of the statute in the prior laws which we have quoted sufficiently disprove this theory. If accidental escape from the authorities, or evasion, protects, then a new premium is put upon clandestine introduction. It is difficult enough now to hold the owners and masters of vessels to their duty to be watchful and diligent in preventing aliens from illegal landing. The policy and intent as well as the language of the acts forbid this conception.

It is true that in the analogous Chinese cases special judicial jurisdiction attaches after illegal entry; but certainly neither the law nor the courts look with favor on any evasive or clandestine introduction of immigrants. And in the present case the provision for return within a year shows that the statute manifestly intends that executive control shall be retained.

The present case was necessarily ruled below by the *Yamasaka case* (100 Fed. Rep., 404), which is not distinguishable. That decision held flatly that an alien landing surreptitiously may, within a year, be arrested and deported by the Secretary of the Treasury without judicial proceeding before a court. Counsel does not demand a *court*, but makes the old plea, familiar in all such cases, that here was an arbitrary arrest by a ministerial officer, and deportation without notice, hearing, or due and just investigation. But the ministerial officer has been clothed with the authority to determine and act, and this court has in numerous cases decided that the executive determination is final. (*Nishimura* v. *United States*, 142 U. S. 651;

Fong Yue Ting v. *United States*, 149 U. S. 698; *Lem Moon Sing* v. *United States*, 158 U. S. 538; *Wong Wing* v. *United States*, 163 U. S. 228; *Fok Yung Yo* v. *United States*, 185 U. S. 296.) Nor is it necessary to pause at any uneasy doubt that wrong has been done. Quite apart from the summary power conferred upon the executive which is beyond review by the courts, the charge of arbitrary, prejudiced, and inconsiderate action is generally found to rest upon mere assertion. I fully believe from recent records and examples that it *always* rests upon assertion; that the Treasury action is correct—consistent with the purpose of the law and with fundamental rights. At all events the court has indicated plainly enough, in a case presenting the precise point—viz, the charge of delusive investigation and unfair and arbitrary decision—that they will not interfere. The presumption is that the result is proper. (*Lee Lung* v. *Patterson*, 186 U. S., 193.)

It is impossible to maintain the proposition that the act of 1891 is unconstitutional as depriving a person of life, liberty, or property without due process of law. As to the authority and finality of executive action, as to the power of Congress, as to the scope of the immunity under Article V of the amendments to the Constitution, the case of Fong Yue Ting and many other familiar authorities decided that such objections to the constitutionality of immigration laws can not be sustained. Congress has the right to expel as well as to exclude aliens. No question is now possible that such

proceedings as the act of 1891 provides, and as were taken in this case, are due process of law. Nor is there any doubt that the principle of security of life, liberty, and property is not involved at all. To exclude or expel does not involve liberty; to be deported to the country whence one came does not restrain liberty. Deportation merely enforces the withholding of the privilege of coming here or remaining here, which Congress has denied in its sovereign capacity for reasons of policy founded in national self-protection.

Cases like *Hagar* v. *The District* (111 U. S., 708) relate to incroachments on the immunities of citizens, and cases like *Yick Wo* v. *Hopkins* (118 U. S., 369) refer to arbitrary State or municipal discriminations against aliens who were lawful denizens of this country.

The following statement from the opinion of the court in *Nishimura Ekiu* v. *United States* (142 U. S., 651, 660) is a precise and conclusive reply to this entire line of argument in appellant's behalf:

> The final determination of those facts [on which the right to land depends] may be intrusted by Congress to executive officers; and in such a case, as in all others in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or con-

> trovert the sufficiency of the evidence on which he acted. * * * It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the National Government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.

III.

Indeed, it will be found, on examination, that all the authorities cited by counsel are wholly inapplicable. Counsel forgets that we are dealing with a special subject, in which the clear will and sovereign competence of Congress are paramount. On this subject the court has held time and again that the executive proceeding is due process of law, and that exclusion and expulsion of aliens are the exercise of constitutional power. Judicial statements as to property and liberty under entirely different circumstances do not remotely affect the present case. It is merely necessary to glance at the authorities in our opponent's brief (pp. 10–16) to perceive that taxing laws, property rights, State charges, and assessments of various kinds, without due notice and proceedings, furnish the situations which elicited the language of this court and other courts, Federal and

State, respecting due process of law and the fundamental guarantees. In the present case liberty is no more involved than property or life. So long as the national policy and law as to immigration stand, there is no room for opposing argument.

The treaty with Japan (treaty of 1894, Art. I, 29 Stat., 848) is necessarily subject to the special exceptions and qualifications of our immigration laws relative to excluded classes of aliens. And section 1977, Revised Statutes, granting to all persons within the jurisdiction of the United States the equal benefit of the laws for the security of persons and property as is enjoyed by *white persons*, and imposing like punishments and liabilities, obviously does not relate to an alien whose right to be within the jurisdiction of the United States is the very point at issue, and the security of whose person and property is not in any sense involved. Further, the words italicized indicate the contrast which denotes that the persons contemplated by that statute are colored persons in the historic sense of all our laws, that is, persons of African descent.

This alien entered the United States clandestinely and illegally. She wishes to remain here, it is true; that privilege is denied her, and she is told she must depart. There is nothing more than this in the case.

There is no dilemma in the suggestion that if the executive power here invoked can be exercised toward a subject of Japan it may also be exercised toward a subject of Great Britain, Germany, or any other nation.

That is exactly true, and the power would be promptly exercised toward the subject of any nation who was thus found to be a pauper or likely to become a public charge.

It is mere rhetoric for the opposing brief to assert that the inspector secretly collected evidence with malicious or biased intent, or that he took advantage of this girl's ignorance and made her give unintentional answers to misunderstood questions, or that he deceived her attorneys as to his intention, or that a sacred right has been determined adversely by the fraud and secrecy of an executive officer. This attitude is very characteristic of such cases; but there is nothing in the record to justify these aspersions, not only against the particular officer, but against the Government in whose service he is employed.

In conclusion, it is pertinent to call the court' attention to the third and fourth articles of the return to the writ (Rec., p. 4):

> That in pursuance of said testimony, admissions of the petitioner, evidence, facts, and circumstances, I did, as such immigrant and Chinese inspector, decide that she had no right to be in the territory of the United States, and was a proper person for deportation. * * * That upon said report and evidence, and after due and regular investigation in the manner prescribed by law, that the proper officers charged with the execution of the various acts of Congress heretofore mentioned also decided

that she, the petitioner herein, was within the United States contrary to the provisions of the said acts of Congress, and that she should be deported.

I respectfully submit that the orders of the court below in favor of the Government, overruling the motion to quash the return to the writ, and sustaining the demurrer to the traverse to the return, should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General.

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